

David H. Coburn  
202 429 8063  
dcoburn@steptoe.com

1330 Connecticut Avenue, NW  
Washington, DC 20036-1795  
202 429 3000 main  
www.steptoe.com

**Steptoe**  
STEPTOE & JOHNSON LLP

232648

AUG 6 2012

August 6, 2012

Via HAND DELIVERY

Cynthia T. Brown  
Chief of the Section of Administration, Office of Proceedings  
Surface Transportation Board  
395 E Street, SW  
Washington, DC 20423

ENTERED  
Office of Proceedings

AUG 06 2012

Part of  
Public Record

**Re: GWI Voting Trust and R. Lawrence McCaffery, Voting Trustee – Control  
Exemption – RailAmerica, Inc., et al., STB Finance Docket No. 35660**

Dear Ms. Brown:

Enclosed for filing in the above-referenced proceeding is an original and 10 copies of the Notice of Exemption for the GWI voting trust. The Notice is being filed to exempt from the provisions of 49 U.S.C. § 11323 the use of the GWI Voting Trust to acquire control of RailAmerica, pending Board approval of GWI's acquisition of such control, as described more fully in the application being filed today in STB Finance Docket No. 35654. *Genesee & Wyoming Inc. – Control – RailAmerica, Inc. et al.* I am also including three CDs containing an electronic copy of the Notice. An overview map, attached to the Notice as Exhibit B, is also included as required by 49 C.F.R. § 1180.6(a)(6). A check for \$1,300 is enclosed in payment of the filing fee for the Application.

One extra copy of the Notice is enclosed. Please acknowledge receipt of the enclosed documents by date stamping the extra copies and returning them to our messenger. Thank you for your assistance.

**FILED**

AUG 06 2012

**SURFACE  
TRANSPORTATION BOARD**

Sincerely,



David H. Coburn  
Anthony J. LaRocca  
Timothy M. Walsh

*Counsel for Genesee & Wyoming Inc.*

**FEE RECEIVED**

AUG 03 2012

Enclosures

**SURFACE  
TRANSPORTATION BOARD**

AUG 6 2012  
RECEIVED

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. FD 35660

**GWI VOTING TRUST  
AND R. LAWRENCE MCCAFFERY, VOTING TRUSTEE  
– CONTROL EXEMPTION –  
RAILAMERICA, INC., *et al.***

---

**NOTICE OF EXEMPTION**

---

*Color Maps Included*

**FILED**

AUG 06 2012

**SURFACE  
TRANSPORTATION BOARD**

**FEE RECEIVED**

AUG 06 2012

**SURFACE  
TRANSPORTATION BOARD**

**ENTERED  
Office of Proceedings**

AUG 06 2012

**Part of  
Public Record**

David H. Coburn  
Anthony J. LaRocca  
Timothy M. Walsh  
Steptoe & Johnson LLP  
1330 Connecticut Avenue, NW  
Washington DC 20036  
(202) 429-8063

Eric M. Hocky  
Thorp Reed & Armstrong, LLP  
One Commerce Square  
2005 Market Street, Suite 1000  
Philadelphia, PA 19103-7094  
(215) 640-8500

*Counsel for GWI Voting Trust and R.  
Lawrence McCaffery, Voting Trustee, and  
Genesee & Wyoming Inc.*

August 6, 2012

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35660

**GWV VOTING TRUST  
AND R. LAWRENCE MCCAFFERY, VOTING TRUSTEE  
– CONTROL EXEMPTION –  
RAILAMERICA, INC., *et al.***

---

**NOTICE OF EXEMPTION**

This Notice of Exemption under 49 C.F.R. §1180.2(d)(2) is filed jointly by the GWV Voting Trust established by Genesee & Wyoming Inc. (“GWV”), a non-carrier holding company, and R. Lawrence McCaffery, the individual appointed as the voting trustee (the “Voting Trustee”). The Notice is being filed to exempt from the provisions of 49 U.S.C. §11323, the potential use of the GWV Voting Trust to acquire control of RailAmerica and the 41 United States Class III railroads that it indirectly controls (the “RailAmerica Railroads”), pending Board approval of GWV’s acquisition of such control, as described more fully herein and in the application being filed today in STB Finance Docket No. 35654, *Genesee & Wyoming Inc. – Control – RailAmerica, Inc. et al.* (the “Control Proceeding”). GWV is joining in this filing as the “settlor” who has created the GWV Voting Trust. Neither the GWV Voting Trust nor the Voting Trustee control, directly or indirectly, any carriers, nor would they do so at the time the GWV Voting Trust were to be used to close the transaction.

**BACKGROUND**

As publicly announced on July 23, 2012, GWV, Jaguar Acquisition Sub Inc., a wholly owned subsidiary of GWV (“Merger Sub”), and RailAmerica have entered into an agreement and plan of merger (the “Merger Agreement”) under which Merger Sub will merge with and into

RailAmerica (the “Merger”), with RailAmerica as the surviving entity in the merger. As a result of the Merger, GWI will obtain control of RailAmerica and indirect control of the RailAmerica Railroads. GWI and RailAmerica are filing today in the Control Proceeding an application with the Board for GWI to control the RailAmerica Railroads pursuant to the Merger.

Following the satisfaction of the closing conditions set forth in the Merger Agreement, GWI expects to close the transaction by completing the Merger and immediately placing the shares of RailAmerica into the GWI Voting Trust which is being established in accordance with the Board’s regulations at 49 C.F.R. Part 1013.<sup>1</sup> The voting trust regulations do not in and of themselves require a voting trust to obtain separate authorization, or an exemption. However, because the GWI Voting Trust and the Voting Trustee would have temporary voting control of more than one railroad, this Notice of Exemption is being filed to confirm that, if and when the stock is placed into the Voting Trust, the GWI Voting Trust and the Voting Trustee will have appropriate authority to control the RailAmerica Railroads. *See* 49 USC §11323(a)(4).<sup>2</sup>

The rail lines of the RailAmerica Railroads would not connect with any railroads in the corporate family of the GWI Voting Trust or the Voting Trustee (they have none), nor is the control described herein part of a series of anticipated transactions that would connect the RailAmerica Railroads with the rail lines of carriers in the corporate family of the GWI Voting

---

<sup>1</sup> As permitted under 49 C.F.R. §1013.3(a), GWI has submitted a copy of the voting trust agreement (the “Voting Trust Agreement”) to the Board’s staff for an informal, nonbinding opinion as to whether the voting trust effectively would insulate GWI from unauthorized acquisition of control of the RailAmerica Railroads.

<sup>2</sup> Pursuant to the Voting Trust Agreement (and voting trusts generally), the GWI Voting Trust will only hold the shares of RailAmerica until the Board acts on the application filed by GWI and RailAmerica. If the application is approved, then the shares of RailAmerica will be distributed to GWI; if the application were to be denied, then the shares of RailAmerica (or the controlled railroads) would be sold to buyers approved by the Board in accordance with the terms of the Voting Trust Agreement.

Trust or Voting Trustee.<sup>3</sup> The acquisition of control by the GWI Voting Trust does not involve a Class I railroad. Accordingly, this is an exempt transaction under 49 C.F.R. §1180.2(d)(2). The Board has previously allowed the use of the notice of exemption procedures in connection with the acquisition of control of a family of railroads. *See SteelRiver Infrastructure Associates, LLC, et al – Control Exemption – Patriot Rail Corp., et al*, STB Docket FD 35622 (served June 15, 2012); *Fortress Investment Group, LLC, et al – Control Exemption – RailAmerica, Inc., et al*, STB Finance Docket No. 34972 (served Dec. 22, 2006).

### REQUIRED INFORMATION

In accordance with the provisions of 49 C.F.R. 1180.4(g), the following information is being provided as required by 49 C.F.R. §1180.6(a)(1)(i)-(iii), (a)(5), (a)(6), and (a)(7)(ii):

#### **1180.6(a)(1)**

(i) The proposed transaction involves the potential acquisition by the GWI Voting Trust of all of the common stock of RailAmerica, a non-carrier holding company that indirectly controls the 41 United States Class III railroads listed on Exhibit A.<sup>4</sup> The Voting Trustee would be entitled to vote all of the stock held by the GWI Voting Trust. No significant changes in the operations of the RailAmerica Railroads are anticipated as a result of the proposed transaction. The full name and address of the GWI Voting Trust and the Voting Trustee is GWI Voting Trust and R. Lawrence McCaffery, Voting Trustee, c/o Unirail, 110 East 59<sup>th</sup> Street, 23<sup>rd</sup> Floor, New

---

<sup>3</sup> Under the Board's requirements for use of a voting trust, the GWI Voting Trust and the Voting Trustee are required to be independent of GWI. Accordingly, neither the GWI Voting Trust nor the Voting Trustee is part of the GWI corporate family.

<sup>4</sup> RailAmerica indirectly controls the RailAmerica Railroads through various intermediate non-carrier subsidiaries. The GWI Voting Trust will control the RailAmerica Railroads by virtue of its control of these intermediate subsidiaries. RailAmerica also controls four railroads that operate in Canada, and other non-carrier businesses which are not subject to the jurisdiction of the Board.

York, NY 10022. The full name and address of GWI as settlor of the Voting Trust is Genesee & Wyoming Inc., 66 Field Point Road, Greenwich, CT 06830.

The names, addresses and telephone numbers of the representatives who should receive correspondence are: David H. Coburn, Anthony J. LaRocca and Timothy M. Walsh, Steptoe & Johnson LLP, 1330 Connecticut Ave., NW, Washington, DC 20036, (202) 429-3000, and Eric M. Hocky, Thorp Reed & Armstrong, LLP, One Commerce Square, 2005 Market Street, Suite 1000, Philadelphia, PA 19103, (215) 640-8500.

(ii) GWI may elect to close into the GWI Voting Trust at any time after this exemption becomes effective, 30 days after it is filed, and the other conditions precedent to the Merger have been satisfied.

(iii) The purpose of the transaction is to allow the common stock of RailAmerica that would be acquired by GWI through the closing of the Merger to be placed into an independent voting trust while the GWI application for control is pending before the Board in the Control Proceeding. There would be no substantial change in the management or operation of the RailAmerica Railroads while the GWI Voting Trust and the Voting Trustee control the railroads.

**1180.6(a)(5)**

Prior to the RailAmerica common stock being placed into the GWI Voting Trust, neither the GWI Voting Trust nor the Voting Trustee will control any railroads. The RailAmerica Railroads operate in the respective states listed on Exhibit A.

**1180.6(a)(6)**

A map of the United States generally showing in “blue” the locations of the RailAmerica Railroads is attached as Exhibit B. The required extra copies of the overview map are being filed

together with the application in Control Proceeding. (Maps of individual RailAmerica Railroads are included as part of the application filed in the Control Proceeding.)

**1180.6(a)(7)(ii)**

As required under 49 C.F.R. § 1013.3(b), a copy of the final Voting Trust Agreement will be filed with the Board prior to any common stock of RailAmerica being placed into the GWI Voting Trust.

**Labor Protection**

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. However, because this transaction involves the control of only Class III carriers, under 49 USC §11326(c), labor protection may not be imposed.

**Environmental and Historic Reports**

The proposed common control involves only corporate control, and will not affect the level of operations on the rail lines of the RailAmerica Railroads. As such, the proposed transaction is exempt from the Board's environmental reporting requirements pursuant to 49 C.F.R. §1105.6(c)(2)(ii). Further, the proposed transaction is exempt from the historic preservation reporting requirements since the proposed common control will not substantially change the level of operations over, or maintenance of, the rail lines of the RailAmerica Railroads.

## CONCLUSION

For the foregoing reasons, the GWI Voting Trust and the Voting Trustee request that the Board issue a notice of exemption pursuant to §49 C.F.R. §1180.2(d)(2).

Respectfully submitted,



David H. Coburn  
Anthony J. LaRocca  
Timothy M. Walsh  
Steptoe & Johnson LLP  
1330 Connecticut Avenue, NW  
Washington DC 20036  
(202) 429-8063

Eric M. Hocky  
Thorp Reed & Armstrong, LLP  
One Commerce Square  
2005 Market Street, Suite 1000  
Philadelphia, PA 19103-7094  
(215) 640-8500

*Counsel for GWI Voting Trust and R.  
Lawrence McCaffery, Voting Trustee, and  
Genesee & Wyoming Inc.*

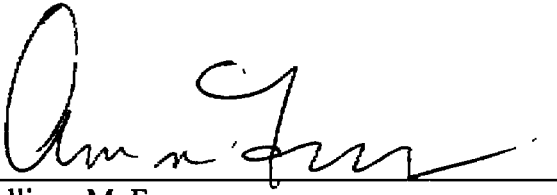
August 6, 2012



## VERIFICATION

I, Allison M. Fergus, on behalf of Genesee & Wyoming Inc. ("GWI") verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file the foregoing document.

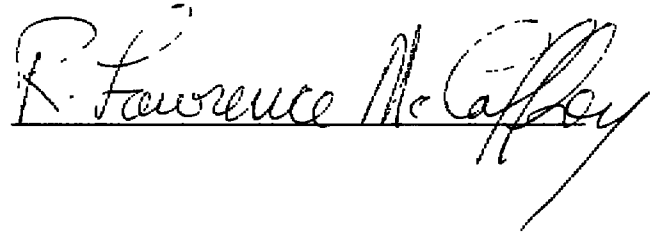
Executed on August 6, 2012.

  
Allison M. Fergus  
Corporate Secretary

## VERIFICATION

I, R. Lawrence McCaffrey, the Voting Trustee of the GWI Voting Trust, individually and on behalf of the GWI Voting Trust, verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file the foregoing document.

Executed on August 6, 2012.

A handwritten signature in black ink, reading "R. Lawrence McCaffrey". The signature is written in a cursive style with a horizontal line underneath the name.

## **EXHIBIT A**

### **RAILAMERICA RAILROADS**

Alabama & Gulf Coast Railway L.L.C. (Alabama, Florida, and Mississippi)  
Arizona & California Railroad Company (Arizona and California)  
Bauxite & Northern Railway Company (Arkansas)  
California Northern Railroad Company (California)  
Carolina Piedmont Division (South Carolina)  
Cascade and Columbia River Railroad Company (Washington)  
Central Oregon & Pacific Railroad, Inc. (California and Oregon)  
The Central Railroad Company of Indiana (Indiana and Ohio)  
Central Railroad Company of Indianapolis (Indiana)  
Chesapeake & Albemarle Railroad Co., Inc. (North Carolina and Virginia)  
Chicago, Ft. Wayne & Eastern (Illinois, Indiana and Ohio)  
Conecuh Valley Railway (Alabama)  
Connecticut Southern Railroad, Inc. (Connecticut and Massachusetts)  
Dallas, Garland & Northeastern Railroad, Inc. (Texas)  
Eastern Alabama Railway, LLC (Alabama)  
Grand Rapids Eastern Railroad Inc. (Michigan)  
Huron & Eastern Railway Company, Inc. (Michigan)  
Indiana & Ohio Railway Company (Indiana, Michigan, and Ohio)  
Indiana Southern Railroad, LLC (Indiana)  
Kiamichi Railroad Company, L.L.C. (Arkansas, Oklahoma, and Kansas)  
Kyle Railroad Company (Colorado and Kansas)  
Marquette Rail, LLC (Michigan)  
The Massena Terminal Railroad Company (New York)  
Mid-Michigan Railroad, Inc. (Michigan)  
Michigan Shore Railroad, Inc. (Michigan)  
Missouri & Northern Arkansas Railroad Company, Inc. (Arkansas, Kansas, and Missouri)  
New England Central Railroad, Inc. (Connecticut, Massachusetts, New Hampshire, and Vermont)  
North Carolina & Virginia Railroad Company, LLC (North Carolina and Virginia)  
Otter Tail Valley Railroad Company, Inc. (Minnesota and South Dakota)  
Point Comfort & Northern Railway Company (Texas)  
Puget Sound & Pacific Railroad (Washington)  
Rockdale, Sandow & Southern Railroad Company (Texas)  
San Diego & Imperial Valley Railroad Company, Inc. (California)  
San Joaquin Valley Railroad Co.(California)  
South Carolina Central Railroad Company, LLC (South Carolina)  
Texas Northeastern Railroad (Texas)  
Three Notch Railway, LLC (Alabama)  
Toledo, Peoria & Western Railway Corporation (Illinois and Indiana)  
Ventura County Railroad Corp. (California)  
Wellsboro & Corning Railroad, LLC (Pennsylvania and New York)  
Wiregrass Central Railway, LLC (Alabama)

# Genesee & Wyoming and RailAmerica North American Rail Lines

